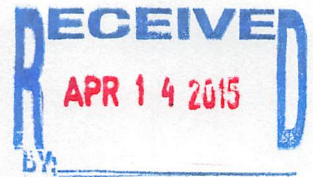


FREEDOM = OF THE PRESS = FOUNDATION



April 3, 2015

VIA MAIL AND FOIAONLINE

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Freedom of Information Act Request

To Whom It May Concern:

This is a request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on behalf of the Freedom of the Press Foundation ("FPF"), a non-profit organization that supports and defends journalism for all records and communications between officials of the Environmental Protection Agency ("EPA") and the offices of Senators on the Judiciary Committee involving the "FOIA Improvements Act," a bill amending FOIA.

In June 2014, the Senate Judiciary Committee released a long-awaited bill meant to reform FOIA, called "FOIA Improvements Act."¹ Among other changes, the bill would have amended exemption 5 of FOIA by providing a sunset provision to the "deliberative process" exception (which exempts documents made in the preliminary stages of an administrative decision reflecting internal opinion).² Despite its very modest changes, the FOIA Improvements Act died in Congress last December, when House Speaker closed the final legislative session of the 113th Congress without bringing the Act to a vote—despite virtually unanimous support in both houses.

Since 2014, several sources have confirmed that the Department of Justice ("DOJ") and several agencies contacted Committee members to express their concern about the bill's approval, which potentially contributed to the bill's death. Even so, in 2015, the House Committee on Oversight and Government Reform's Subcommittee on Government

¹ S.2520, 113 Cong. (2014), available at <http://thomas.loc.gov/cgi-bin/query/z?c113:S.2520>.

² Jason Leopold, *Lawmakers unveil major changes to FOIA*, Al Jazeera America (June 24, 2014), available at <http://america.aljazeera.com/articles/2014/6/24/reform-freedom-informationact.html>.

Operations held a hearing, “Ensuring Government Transparency Through FOIA Reform” and renewed the legislation.

Since that time, reports have confirmed further pushback to the bill.³ A report released by the Senate Judiciary Committee, stated that the DOJ and assistant U.S. attorneys had contacted Senator Jeff Sessions to express concern that the proposed changes to the deliberative process exception would trigger new litigation.⁴ At a hearing this month, Rep. Elijah Cummings (D-Md.), one of the sponsors of the bill noted that, in addition to the DOJ, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, and the Federal Trade Commission had all expressed concerns about the FOIA reform bill. Other sources have suggested that the EPA has also contacted Congress with regard to the bill. The EPA has also recently been cited by a federal judge for being “offensively unapologetic” in its handling of FOIA requests.⁵ Even without these reliable sources, given the “concern” expressed by various agencies about what they are responsible for divulging under FOIA, it is almost certain that the EPA has conveyed its position on the legislation to the authors of the bill and Senate Judiciary members.

Accordingly, given the renewal of the recent bill and further proof that Senate members and other members of Congress are continually being contacted by agencies, FPF hereby requests all agency records (including, but not limited to, electronic records and emails) created from January 1, 2014 to *present* discussing, concerning, or reflecting efforts by officials within the EPA to contact members of the Senate and Congress to explain its position, or influence the Freedom of Information Act reform legislation in any way, including:

- 1) All records of communications between any official or employee of the EPA and the offices of any member of the Senate, including Senators Patrick Leahy, John Cornyn, Charles Grassley, Jeff Sessions, Jay Rockefeller (Ret.) or any member of Senate staff, regarding the previous and current FOIA reform legislation; and
- 2) All records of communication between any official or employee of the EPA and the offices of Representatives Elijah Cummings, Darrel Issa, and all other sponsors of the previous and current FOIA reform legislation.

Request for News Media Fee Waiver

FPF asks that it not be charged search or review fees for this request because it qualifies as a “[r]epresentative of the news media” pursuant to the FOIA and 40 C.F.R. § 2.107(b)(6).

³ Kevin Bogardus, *Subtle push against FOIA bill begins in administrative branch*, E&E PUBLISHING, March 5, 2015.

⁴ SEN. REP. NO. 114-1, at 16 (2015).

⁵ Landmark Legal Foundation v. EPA, No. 12-1736, WL 4083285 (D.D.C. August 14, 2013) (Lamberth, J.).

FPF is a non-profit public interest organization that works “support and defend journalism dedicated to transparency and accountability.” One of FPF’s primary objectives is educate the public about press freedom and government transparency issues. To accomplish this goal, FPF routinely and systematically disseminates information in several ways.

FPF publishes a blog that highlights the latest news from around the Internet relating to press freedom issues. The blog (<https://freedom.press/blog/>) also reports and analyzes newsworthy developments related to secrecy and government transparency. Furthermore, FPF has also publishes an online newsletter since early 2013. *Visible* currently has more than 33,000 subscribers.

In addition, FPF uses social media extensively to disseminate information to the public. FPF has almost 52,000 followers on Twitter and sends out hundreds of “tweets” per month with short summaries of FPF blog posts and information on newsworthy issues pertaining to press freedom, surveillance, secrecy, transparency, open access issues, technology, digital security, and civil liberties. FPF also has almost 7,000 people who “like” the organization on Facebook and who receive FPF’s blog posts and updates through the site.

Due to these extensive publication activities, FPF is unquestionably a “representative of the news media” under the FOIA and agency regulations.

Request for Expedited Processing

FPF is entitled to expedited processing because FPF is an organization “engaged in disseminating information to the public” and there is an “urgency to inform the public about an actual or alleged Federal government activity” under 40 C.F.R. § 2.104(e)(1)(ii). *See also* 5 U.S.C. § 552(a)(6)(E)(i).

First, because the EPA is an executive agency within the federal government, information concerning the EPA’s activities related to potential Freedom of Information Act reform clearly and directly relates to the operations or activities of the federal government.

Second, disclosure of the requested information is urgent because it will contribute to the current public discussions involving the passage of the FOIA Improvement Act of 2015. FPF has requested information that will shed light on the role, if any, EPA played in the decisions of Congress to support, not support, or alter previous or current legislation regarding the Freedom of Information Act. The requested information is not in the public domain and, therefore, will necessarily contribute to a more robust public understanding of the subject.

Third, expedited processing is appropriate here because FPF has no commercial interest in the disclosure of the requested records. FPF is a non-profit public interest organization engaged in disseminating information to the public. 40 C.F.R. § 2.104(e)(1)(ii).

Thank you for your consideration of this request. As FOIA provides, I will anticipate a determination with respect to the disclosure of requested records within 20 working days or sooner. If you have any questions or concerns, do not hesitate to contact me at trevor@freedom.press or at (415) 767-5566 ext. 10.

Sincerely,

A handwritten signature in black ink, appearing to be 'Timm', with a stylized, flowing script.

Trevor Timm
Executive Director
Freedom of the Press Foundation